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SEP 27 1911
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States

Number 2, Original.

October Term, 1911.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

MOTION OF THE COMPLAINANT.

RICHMOND, VIRGINIA, September 26th, 1911.

TO THE HONORABLE W. G. CONLEY,
Attorney General of West Virginia,
Charleston, West Virginia.

Please take notice that in the suit of the *Commonwealth of Virginia* v. *the State of West Virginia*, Original No. ——, pending in the Supreme Court of the United States at Washington, D. C., I shall, on Monday the 9th day of October, 1911, move the said court to proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the sixth day of March, 1911, and will base said motion on the record of the case and the facts stated in the foregoing statement in writing, and exhibits filed therewith.

Respectfully,

COMMONWEALTH OF VIRGINIA,

By Jam'l W. Williams

Attorney General of Virginia.

In the Supreme Court of the United States

Number ——, Original.

October Term, 1911.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

MOTION OF THE COMPLAINANT.

The Commonwealth of Virginia, through Samuel W. Williams, her Attorney General, shows to the court:

1. That upon the publication of the decision of the court made in the above entitled cause on the 6th day of March, 1911, the Virginia Debt Commission, which by law was "authorized and empowered by and with the advice and approval of the Attorney General of Virginia, to take such action and institute such proceedings on behalf of the State, as may, in the judgment of said Commission and Attorney General, be needful and proper to protect the interest of the State, and bring about and carry into effect a settlement as aforesaid" (see Record p. 49), held a session in Richmond, Virginia, on the 20th of April, 1911, and proceeded with the approval of the Attorney General to take such action on the part of Virginia, as in their judgment was proper to carry into effect the suggestion of this court, contained in the opinion delivered by Mr. Justice Holmes, in the following words:

> "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies, we think it best at this stage, to go no further, but to await the effect of a conference between the parties which, whatever the outcome, must take place."

2. That this court having determined the share of the principal of the public debt of the Commonwealth of Virginia for which West Virginia is liable, in manner and form as set forth in its decision, but left the question of the interest on said debt to be adjusted by a conference between the two States, the Virginia Debt Commission, by and with the approval of the Attorney General, the official body of the Commonwealth fully empowered to deal with this subject, in obedience to the recommendation of the court, took the following action:

3. It addressed a communication to the Governor of West Virginia in the words and figures following:

RICHMOND, VA., April 20, 1911.

To His Excellency,

The Governor of West Virginia.

Sir:—The "Virginia Debt Commission," constituted and acting on behalf of Virginia under the joint resolution of the General Assembly of that State, approved March 6th, 1894, and the act of said General Assembly approved March 6th, 1900, was "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia," as shown by copies of said Resolution and Act hereto attached.

In the opinion of the Supreme Court of the United States delivered on the 6th of March, 1911, by Mr. Justice Holmes, in the case of the *Commonwealth of Virginia* v. *State of West Virginia*, there was announced a "decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed."

With respect to the amount of *interest* on such principal, the court made no decision, but in referring thereto said: "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court, in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies, we think it best, at this stage, to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place." A copy of said opinion is also hereto attached.

At a meeting of the Virginia Debt Commission, held in Richmond, Va., on the 20th day of April, 1911, the subject of the "conference between the parties," suggested by the court,

received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States.

Very respectfully,

(Signed) JOHN B. MOON,
Chairman Virginia Debt Commission.

Attest:

(Signed) JOSEPH BUTTON,
Secretary.

Resolved Further, That the said letter be transmitted with all convenient despatch to the Governor of West Virginia by a Special Committee consisting of Messrs. Flood, Rhea and Downing, any two members to have power to act, who shall report such reply as they may receive to the Chairman of this Commission.

The above action of the Virginia Debt Commission is approved as is provided by Act approved March 6, 1900.

(Signed) SAMUEL W. WILLIAMS,
Attorney General of Virginia.

A copy: Teste

(Signed) JOSEPH BUTTON,
Secretary.

And this communication the said Commission caused to be transmitted to the Governor of West Virginia by a committee composed of three members of the Commission, any two of whom were empowered to act, which committee delivered the same into the hands of the Honorable William E. Glasscock, Governor of West Virginia, at Charleston, on the second day of May, 1911, as will appear from the following letter of the Governor of West Virginia to the Governor of Virginia:

STATE OF WEST VIRGINIA,
Governor's Office,
Charleston, May 9, 1911.

HON. WM. HODGES MANN,
Governor of Virginia,
Richmond, Va.

Dear Governor Mann:—Late in the evening of the 2d instant I received a call from Messrs. Wm. F. Rhea and H. H. Downing, bearing letters of recommendation from you and representing the Virginia Debt Commission. They made the following request:

"At a meeting of the Virginia Debt Commission, held in Richmond, Virginia, on the 20th day of April, 1911, the subject of the 'conference between the parties,' suggested by the court, received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

"The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States."

Their request relates to my message to the Legislature at the extraordinary session which is to convene on May 16th. Mr. Rhea, of the Commission, particularly seemed to think that early, if not immediate, response should be made. You, of course, will appreciate the fact that it would be wholly improper to advise anyone of the contents of my communication to the Legislature or even in general of my purpose relative thereto in advance of the submission of the message to the Legislature itself.

With greatest respect, I remain.

Very truly yours,
(Signed) WM. E. GLASSCOCK.
Governor.

4. To this communication the Governor of West Virginia has made no response, either to said committee, or to the Virginia State Debt Commission which it represented; nor has the State of West

Virginia, through any of its constituted authorities, or in any other manner, taken any action with reference to the overtures so made by the State of Virginia for a conference between the States to effect an amicable settlement of the matters referred to in the suggestion of this court in its decision above referred to.

5. That on a day prior to the 20th of April, 1911, the Governor of West Virginia had issued a proclamation convening the Legislature of West Virginia in extraordinary session for the consideration of two matters of business specified in said proclamation, but that said Legislature did not assemble in extra session until the 16th day of May, 1911, and on that day there was sent to the Legislature the "Message of Governor Glasscock to the Legislature of 1911. Extra Session, May 16, 1911," a copy of which will be filed herewith.

6. The attention of the court is respectfully called to so much of said message as relates to the Virginia Debt case, and particularly to the paragraph of said message, next to the last, which is in the following words:

> "The Constitution provides that the Governor may convene the Legislature whenever in his opinion the public safety or welfare shall require it; and that he shall convene it on application in writing of three-fifths of the members elected to each House. If, however, without such formal action by three-fifths of the members of each House, a majority of the members of your honorable body should in any manner express to me the opinion that the Legislature should be called into extraordinary session to consider the conditions presented by the opinion of the Supreme Court of the United States, I should deem it sufficient evidence that a proper condition existed for the convening of the Legislature for that purpose. I shall be glad to be advised from time to time of the views of the members of the Legislature on this subject."

The Constitution of West Virginia provides (Art. 7, Sec. 7):

> "The Governor may on extraordinary occasions convene, at his own instance, the Legislature, but when so convened, it shall enter upon no business except that stated in the proclamation by which it is convened."

7. The proclamation of the Governor convening the Legislature in extra session had been issued before the Virginia Debt Commission met in Richmond on the 20th of April, 1911, but the Legislature did not assemble in session until the 16th day of May, 1911, so that twenty-six days intervened between the date of the communication from the Commission to the Governor, and the assembling of the Legislature in extra session.

The Virginia Debt Case was not one of the subjects of business mentioned in the proclamation convening the Legislature, but the intervening time was sufficient to have allowed the Governor to include this subject in a further proclamation, before the Legislature assembled, or to have made it the subject of another proclamation, after the Legislature had assembled, and before it had adjourned and dispersed from the Capitol.

The Constitution of the State laid the responsibility upon the Governor, of convening the Legislature, for the consideration of such business as he might state in his proclamation convening that body, but it here appears that the Governor deemed it wisest to cast this responsibility upon the members of the Legislature, or upon a majority of that body, by referring to them the question as to "whether a proper condition existed for the convening of the Legislature for that purpose."

8. Complainant shows your Honors, that under the Constitution of West Virginia, the Legislature of that State (unless specifically convened by the Governor in extraordinary session) can meet bienially only, its regular sessions beginning on the second Wednesday in January in each alternate year—and that the last regular session of that body was held under that Constitution beginning on the second Wednesday in January of the present year.

See Section 18, Article VI, of Constitution of West Virginia, which is in the words and figures following:

> "The Legislature shall assemble at the seat of government biennially, and not oftener, unless convened by the Governor. The first session of the Legislature, after the adoption of this Constitution, shall commence on the third Tuesday of November, 1872; and the regular biennial session of the Legislature shall commence on the second Wednesday of January, 1875, and every two years thereafter, on the same day."

There will accordingly be no regular session of the Legislature of that State until the session commencing in due course on the second Wednesday in January, 1913.

9. Complainant farther respectfully shows your honors that the Commonwealth of Virginia, and her duly constituted representatives, have been ready and anxious to meet the authorized representatives of West Virginia for the purpose of an amicable adjustment of the important question left undecided by the decision of this court, in an effort to reach some just and equitable conclusion as to what interest under all of the circumstances of the case, West Virginia should assume and pay on her equitable share of the common indebtedness, provided there was any hope held out that such a conference would result in any equitable and prompt adjustment of that question; but from the manner in which the proposal made by the Commonwealth of Virginia in that behalf has been received, and from other facts and circumstances shown by the record, she has been reluctantly constrained to the conclusion that there is no likelihood whatever that any satisfactory result would be attained by a renewal of, or by farther pressing the overture already made, and which has been so completely ignored.

10. The foregoing recitals as to the action of the Virginia Debt Commission and the Attorney General, the overtures they made to the Governor of West Virginia, and through him to the Legislature of that State, and the comments of the Governor of West Virginia thereon, are supported by the report of the committee appointed by the Virginia Debt Commission to wait upon Governor Glasscock, and the documents filed therewith, especially Governor Glasscock's message to the Legislature of West Virginia on the 16th of April last and documents printed in the appendix thereto, a copy of which will be attached hereunto as part hereof.

11. The Commonwealth of Virginia having thus exhausted the means within her control for bringing about a conference between the two States as recommended by the court, can, under the circumstances, derive no hope or expectation that West Virginia will make any agreement with Virginia for a settlement in the manner indicated by this Court, and is convinced that the time has come for this court in its own way to determine the questions left open

by its decision already rendered, and to grant the complainant complete relief.

To this end she therefore respectfully urges that the court will, in accordance with the alternative suggestion made in its decision, recommit the cause to the Special Master with instructions to ascertain and report forthwith to the court the amount of interest which the State of West Virginia should be required to pay on the principal sum already indicated by the court, or that the court will proceed otherwise, as it may determine, to adjudicate that question.

The Commonwealth of Virginia respectfully urges and moves the court that the cause be speeded so that a final decree may be made therein and this controversy brought to a close.

COMMONWEALTH OF VIRGINIA.

By Jamil. W. Williams

Attorney General of Virginia.

APPENDIX.

RICHMOND, VA., September 20th, 1911.

To the Virginia Debt Commission
in Session at Richmond.

GENTLEMEN:—On the 20th day of April, 1911, the Virginia Debt Commission, in session at Richmond, adopted a resolution authorizing and directing John B. Moon, Chairman of said Commission, to sign on behalf of the Commission, a letter in the following form, the same to be attested by the Secretary of the Commission, addressed to His Excellency, the Governor of West Virginia:

To His Excellency,
The Governor of West Virginia.

SIR:—The "Virginia Debt Commission," constituted and acting on behalf of Virginia under the joint resolution of the General Assembly of that State, approved March 6th, 1894, and the act of said General Assembly approved March 6th, 1900, was "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia," as shown by copies of said Resolution and Act hereto attached.

In the opinion of the Supreme Court of the United States delivered on the 6th of March, 1911, by Mr. Justice Holmes, in the case of the *Commonwealth of Virginia* v. *State of West Virginia*, there was announced a "decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed."

With respect to the amount of *interest* on such principal, the court made no decision, but in referring thereto said: "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court, in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies, we think it best, at this stage, to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place." A copy of said opinion also is hereto attached.

At a meeting of the Virginia Debt Commission, held in Richmond, Va., on the 20th day of April, 1911, the subject of the "conference between the parties," suggested by the court,

received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States.

Very respectfully,

(Signed) JOHN B. MOON,
Chairman Virginia Debt Commission.

Attest:

(Signed) JOSEPH BUTTON,
Secretary.

The said Virginia Debt Commission, at the same meeting adopted a resolution appointing Mr. Flood and the undersigned, a a special committee, to transmit with all convenient dispatch t the Governor of West Virginia, the letter addressed to him a shown above. Mr. Flood not being able to accompany the under signed at the time arranged for carrying out the resolution las mentioned, the undersigned proceeded to Charleston, West Vir ginia, on the 2nd day of May last, and in the evening of that da called on His Excellency, William E. Glasscock, Governor of Wes Virginia, and was very cordially received. The undersigned pre sented to him letters of introduction from Governor Willia Hodges Mann, of Virginia, and at the same time the undersigne delivered to him the communication above mentioned, together wit the opinion of the Supreme Court of the United States in the cas of *Commonwealth of Virginia* v. *State of West Virginia*, and wit the act of the General Assembly of Virginia of 1894, entitled "A joint resolution to provide for adjusting with the State of We Virginia the proportion of the public debt of the original State o Virginia proper to be borne by West Virginia, for the applicatio of whatever may be received from West Virginia to the payme

of those found to be entitled to the same," approved March 6, 1894, and with an act of the General Assembly of Virginia of 1900, entitled "As act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, attached thereto. The undersigned advised Governor Glasscock that they had been sent to West Virginia by the Virginia Debt Commission in pursuance of the intimation expressed in the decision of the West Virginia debt question by the Supreme Court of the United States to the effect that the representatives of the Commonwealths of Virginia and West Virginia should undertake to negotiate a settlement of the interest on that part of the debt due by West Virginia to the State of Virginia, and that they hoped that he, the Governor of West Virginia, would cause to be appointed a representative or representatives of the State of West Virginia with full authority to treat with the Virginia Debt Commission on the subject of interest to be paid by the State of West Virginia: that they believed that representatives of the two States could make an amicable adjustment of the matter in controversy. The Governor of West Virginia expressed his intention of giving the matter very thorough investigation and consideration, after which he would make such reply to said communication as he deemed necessary and proper. Up to this time neither of the undersigned has received any reply from the Governor of West Virginia to the communication delivered to him as above mentioned.

Your Committee herewith attaches to this report the message of the Governor of West Virginia to the Legislature of that State, being in extra session, May 16th, 1911, so far as it relates to the Virginia debt case. Beginning on page 15 of the message aforesaid, under the heading "Virginia Debt Case," will be seen what the Governor of West Virginia has to say to the Legislature in regard to the West Virginia Debt matter. It will be noticed that the Governor attaches to his message an appendix containing the decision of the Supreme Court of the United States in *Commonwealth of Virginia* v. *State of West Virginia*, and also the Act of

the General Assembly of Virginia of March 6th, 1894, above alluded to, and also the Act of the General Assembly of Virginia of March 6th, 1900, above alluded to, and also the communication signed by John B. Moon, Chairman of Virginia Debt Commission, and addressed to His Excellency, Governor of West Virginia, which communication has been above set forth in this report, and also the resolution of the Virginia Debt Commission appointing Mr. Flood and the undersigned, giving power to any two members to act to transmit with all convenient dispatch to the Governor of West Virginia the communication aforesaid. The action of the Virginia Debt Commission in communicating as aforesaid with the Governor of West Virginia, and appointing a special committee to transmit said communication to the Governor of West Virginia was approved by Samuel W. Williams, Attorney General of Virginia, attested by Joseph Button, Secretary of said Virginia Debt Commission, as the record will show.

In said appendix, on page 26, will also be seen the letter of the Governor of West Virginia, dated May 9th, 1911, addressed to Hon. William Hodges Mann, Governor of Virginia, Richmond, Va., relative to the visit of the undersigned to the Governor of West Virginia, and the purpose of same, the said letter being in answer to the letters of Governor Mann introducing the undersigned to the Governor of West Virginia, which letters are hereto attached.

Respectfully submitted,

WM. F. RHEA,
H. H. DOWNING,

The foregoing is a true copy of the report of the Committee appointed by the Virginia Debt Commission to wait upon the Governor of West Virginia in pursuance of the resolutions adopted by said Commission on the 20th day of April, 1911.

JOS. BUTTON,
Secretary of the Virginia Debt Commission.

April 25th, 1911.

Hon. William E. Glasscock,
Charleston, West Virginia.

Dear Governor:—This will be handed you by my personal

friend, Hon. Wm. F. Rhea, who is a member of our State Corporation Commission, and also of the State Debt Commission of Virginia. The high character and standing of Judge Rhea, official and personal, makes it unnecessary for me to say anything in his behalf. I will, however, very highly appreciate any courtesy you can show him while in your State.

With assurance of high regard, I am,

Very truly yours,

(Signed) WM. HODGES MANN,

Governor.

April 25th, 1911.

HON. WILLIAM E. GLASSCOCK,

Charleston, West Virginia.

DEAR GOVERNOR:—Mr. H. H. Downing, of Front Royal, a gentleman of high character, a lawyer of distinction, and a member of our State Debt Commission, will, in a short time, with the other members of a committee, visit your State for conference in reference to the matters of difference between the two States which I trust can be satisfactorily adjusted. I am sure he will so commend himself to your consideration as to receive every courtesy at your hands.

I will appreciate any kindness shown him as a personal kindness to me.

With kind regards, I am,

Very truly yours,

(Signed) WM. HODGES MANN,

Governor.

WEST VIRGINIA

MESSAGE OF GOVERNOR GLASSCOCK TO THE LEGISLATURE OF 1911, EXTRA SESSION, MAY 16, 1911.

GOVERNOR'S MESSAGE.

To the Members of the Senate and House of Delegates:

* * * * * * * *

VIRGINIA DEBT CASE.

I deem it my duty to call your attention to the opinion filed on the 6th day of March, 1911, by the Supreme Court of the

United States in the suit in equity brought and now pending in that court by the Commonwealth of Virginia against the State of West Virginia.

Late in the evening of the 2d instant, I was visited here in Charleston by two members of the Virginia Debt Commission claiming to act under the authority of Acts of the General Assembly of Virginia, approved respectively, March 6th, 1894, and March 6th, 1900. That commission has made the following request in writing:

> "At a meeting of the Virginia Debt Commission held in Richmond, Virginia, on the 20th day of April, 1911, the subject of the 'conference between the parties,' suggested by the court, received consideration and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.
>
> "The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States."

You will observe that my proclamation convoking you in extraordinary session was issued prior to the time of the meeting of the Virginia Debt Commission above referred to. Reference to this question was omitted therefrom, because it was thought that the initiative should come from Virginia; because I was advised that the attorneys for West Virginia were considering further proceedings in the case; and because I was not sufficiently advised of the full effect of the opinion of the court to justify me at that time in including it among the subjects of your action; nor am I yet disposed to force upon you consideration of this matter, nor to recommend to you what steps, if any, should now be taken therein.

I am not disposed to be hurried by influences in this State or elsewhere into action, without ample time for consideration, upon a matter which so very greatly affects the interests and honor of

irginia. Many persons, aware how seriously the people of
a have many times been divided upon the Virginia Debt
n, and how many and how bitter have been the criminations
recriminations aroused by the consideration of this ques-
om time to time in the General Assembly of that Common-
had hoped that through the decision of the court we might,
er the money outcome might be, escape the other and dif-
perils which the people of Virginia have not been able to

Questions to be Considered.

Whether you will be of opinion that it is your duty to take
in this matter before the General Assembly of Virginia has
or will deem that the former action of the latter body in
ating the Virginia Debt Commission makes it incumbent now
this State to take the initiative; whether you will be of opin-
at a commission should be appointed to meet that commis-
r some other, are some of the questions which deserve to re-
and I have no doubt are receiving, the most earnest consid-
n of every one of you.

append to this message a copy of the decision of the Supreme
of the United States, of the two Acts of the Virginia As-
y above referred to, the written communication of the Vir-
Debt Commission to me, and a copy of my letter to Governor
with respect thereto.

The Constitution provides that the Governor may convene the
slature whenever in his opinion the public safety or welfare
require it, and that he shall convene it on application in writ-
f three-fifths of the members elected to each House. If, how-
without such formal action by three-fifths of the members of
House, a majority of the members of your Honorable Body
ld in any manner express to me the opinion that the Legisla-
should be called into extraordinary session to consider the
ition presented by the opinion of the Supreme Court of the
ted States I should deem it sufficient evidence that a proper
sion existed for the convening of the Legislature for that pur-
. I shall be glad to be advised from time to time of the views
he members of the Legislature on this subject.

It shall be my pleasure to contribute in any possible way to the success of the work before you and I shall hold myself in readiness to render you any service within my power.

WM. E. GLASSCOCK,
Governor.

Charleston, West Virginia,
May 16, 1911.

APPENDIX

(Opinion of court already in record and not here printed.)

ACT OF VIRGINIA ASSEMBLY OF 1894.

A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

(Approved March 6, 1894.)

WHEREAS the general assembly of Virginia is required by the Constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be bourne by West Virginia; and

WHEREAS the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to-wit:

FIRST. An act entitled an act to provide for the funding any payment of the public debt, approved March twenty-eighth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created and actually existing at the time of the

partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas, in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit, one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original State; now, therefore,

Be it Resolved by the Senate of Virginia (The house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this State, shall be appointed by the Governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the Legislature shall be filled by the Governor on ratification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia.

But said commission shall not proceed with said negotiations til assurances satisfactory to the commission shall have been ceived from the holders of a majority in amount of said certifi-es, exclusive of those held by the State through the agency of board of education and sinking fund commissioners, that they sire the said commission to enter into and undertake such nego-tion, and will accept the amount so ascertained to be paid by the ate of West Virginia in full settlement of the one-third of the bt of the original State of Virginia which has not been assumed the present State of Virginia. But said commission shall in no ent enter into any negotiation hereunder except upon the basis at Virginia is bound only for the two-thirds of the debt of the iginal State which she has already provided for as her equitable oportion thereof.

All expenses incurred by said commission and said board of ar-trators, including reasonable compensation of the members there-, shall be paid out of the proceeds of such settlement, or by the olders of said certificates who are the beneficiaries of such settle-ent, but without subjecting the State to any expense on this ac-unt.

And their action shall be subject to the approval or disapproval f the general assembly, and shall not be binding on the State until pproved by the general assembly. The Governor is requested to ommunicate this joint resolution to the Governor and Legislature f West Virginia.

This joint resolution shall be in force from its psasage.

A true copy.

(Signed) JNO. W. WILLIAMS,
Clerk House of Delegates and
Keeper of the Rolls of Virginia.

ACT OF VIRGINIA ASSEMBLY OF 1900.

An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

(Approved March 6th, 1900.)

WHEREAS the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows—to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

WHEREAS in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia—to-wit: One-third of the amount of said obligations, of which certificate this

State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

WHEREAS the Generaly Assembly is required by the Constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

WHEREAS it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia, that the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virgisia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon

the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedisgs on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

A true copy.

(Signed) JNO. W. WILLIAMS,
Clerk House of Delegates and
Keeper of the Rolls of Virginia.

COMMUNICATION FROM VIRGINIA DEBT COMMISSION.

RICHMOND, VA., April 20, 1911.

To His Excellency,
The Governor of West Virginia.

SIR:—The "Virginia Debt Commission," constituted and acting on behalf of Virginia under the joint resolution of the General Assembly of that State, approved March 6th, 1894, and the act of said General Assembly approved March 6th, 1900, was "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia," as shown by copies of said Resolution and Act hereto attached.

In the opinion of the Supreme Court of the United States delivered on the 6th of March 1911, by Mr. Justice Holmes, in the case of the *Commonwealth of Virginia* v. *State of West Virginia*, there was announced a "decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed."

With respect to the amount of *interest* on such principal, the court made no decision, but in referring thereto said: "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court, in reliance upon the honor and constitutional obligations of the States

concerned rather than upon ordinary remedies, we think it best, at this stage, to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place." A copy of said opinion also is hereto attached.

At a meeting of the Virginia Debt Commission, held in Richmond, Va., on the 20th day of April, 1911, the subject of the "conference between the parties," suggested by the court, received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States.

Very respectfully,

(Signed) JOHN B. MOON,
Chairman Virginia Debt Commission.

Attest:

(Signed) JOSEPH BUTTON,
Secretary.

LETTER OF GOVERNOR OF WEST VIRGINIA TO GOVERNOR OF VIRGINIA.

STATE OF WEST VIRGINIA
GOVERNOR'S OFFICE.

Charleston, May 9, 1911.

HON. WM. HODGES MANN,
Governor of Virginia,
Fichmond, Va.

DEAR GOVERNOR MANN:—Late in the evening of the 2nd instant I received a call from Messrs. Wm. F. Rhea and H. H. Downing, bearing letters of recommendation from you, and representing the Virginia Debt Commission. They made the following request in writing:

"At a meeting of the Virginia Debt Commission, held in Richmond, Virginia, on the 20th day of April, 1911, the subject of the 'conference between the parties,' suggested by the court, received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two states, in order to bring about a final and complete conclusion of the cause.

"The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States."

Their request relates to my message to the Legislature at the extraordinary session which is to convene on May 16th. Mr. Rhea, of the Commission, particularly, seemed to think that early, if not immediate, response should be made. You, of course, will appreciate the fact that it would be wholly improper to advise anyone of the contents of my communication to the Legislature or even in general of my purpose relative thereto in advance of the submission of the message to the Legislature itself.

With greatest respect, I remain,

Very truly yours,

(Signed) WM. E. GLASSCOCK.
Governor.

FILE COPY.

Office Supreme Court, U. S.
FILED.
MAR 30 1912
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

2

No. 8, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR BONDHOLDING CREDITORS.

HOLMES CONRAD,
Counsel for the Bondholding Creditors.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 8, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR BONDHOLDING CREDITORS.

In response to the order made herein on March 18, 1912, directing the parties to show cause before this court on Monday, April 8, why the prayer of the petition of the special master, that the amount of his compensation, as fixed by the court, be advanced and paid by the complainant herein, should not be granted, the bondholding creditors of Virginia, who by leave of the court have been allowed to appear in this cause by counsel, ask permission to appear now and say:

1. That they know of no ground why the compensation allowed to the special master for the arduous and efficient

services performed by him under the order of the court in this cause should not be paid to him. He has certainly earned this compensation. He rendered the services as an officer of the court and on behalf of the parties to the cause. He might have withheld his report until his compensation was paid, but he did not do so. He returned it to the court, relying on the obligation of the court and of the parties to see that his compensation was paid.

2. There are considerations, however, why at this stage of the cause the State of West Virginia, the defendant in the cause, should be ordered to pay into court, as part of the costs, the amount fixed by the court as the compensation of the special master. To some of these considerations we beg to direct the attention of the court.

3. At an early stage of the cause, and while the burden rested on the complainant State of establishing the case it had charged in its bill, it was directed to deposit, and it did deposit, with the marshal of this court sums of money amounting to over $30,000, to meet the expenses of the litigation it had excited. All the expenses of the litigation up to the present stage have been paid by the complainant.

The defendant State demurred to the bill. There was argument before a full court of nine justices—five of whom, alas, are no longer here—and on May 27, 1907, there was a unanimous opinion and judgment overruling the demurrer (206 U. S., 290). In October, 1907, the defendant filed its answer. In April, 1908, plans for orders of reference to a master were submitted, and on May 4, 1908, the form of the decree was announced by the court after argument by counsel (209 U. S., 514), and the cause was referred to a special master. On March 17, 1910, the special master returned his report, and the cause was again argued in January, 1911, and was decided on March 6, 1911 (220 U. S., p. 1). In the opinion of the court, delivered by Mr. Justice Holmes, after

reviewing the various grounds which had been suggested as bases of settlement, the conclusion reached was stated as follows:

> "Taking 235 as representing the proportion of West Virginia, we have $7,182,507.46 as her share of the public debt.
>
> "We have given our decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things there still remains the question of interest" (*ibid.*, p. 35).

So, it appears, that whatever remains to be done before the "judgment could be put in the form of a final decree," it has been *decided* that West Virginia is liable under the issues joined on bill and answer in the sum of $7,182,507.46.

And here another and distinct stage of the case is reached, and the parties are placed in a wholly different relation to each other.

It was very proper, at the early stages of the case, to require from the complainant the deposit of money sufficient to defray the costs of the litigation, because at those stages it was uncertain what the merits of the controversy were—who was in default, and in whose favor judgment would have to be finally given. That uncertainty no longer exists. The defendant State is here found to be in default, and while no formal final decree has been made, yet it has been decided that West Virginia is liable in an amount exceeding $7,000,000. A further payment on account of the costs of this suit has now to be made. The compensation of the master, who has stated the accounts, has been fixed at the amount of $20,000, and it must now be paid.

Which of the parties litigant should, at this stage of the case, be required to pay this amount?

Virginia, who has established her case as it is stated in the bill and has shown her right to recover against West Virginia, or West Virginia, as to whom it has been already decided by the court that she is liable to Virginia in a sum that is ascertained in full as to the principal?

If it be said that the usual and ordinary practice of the courts is to let the allowance and adjudication of costs abide the final result and be provided for in the final decree, that may be conceded.

But there is no peremptory and iron-clad rule that controls the court and prevents it from doing what is reasonable and proper in each case.

There is nothing to prevent the court from now giving judgment for both principal and interest in this case.

The material from which the amounts of both principal and interest can be readily ascertained is in the record. Both parties submitted the case for final decree, in the confidence that the court was furnished with all the means which the parties, at least, believed to be needful for making a complete, final decree in the cause.

The court in its opinion of March, 1911, after ascertaining the amount of the principal liability, said, with reference to the interest:

> "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies, we think it best to go no farther, but to await the effect of a conference between the parties, which, whatever the outcome, *must take place.*" (Italics ours.)

So that the failure to ascertain the amount due as interest was not owing to any fault or dereliction on the part of the complainant.

The court might, had it seen proper to do so, have put the defendant upon terms and provided that its liability for

principal having been ascertained and decided, a further extension of time, for the purpose of a conference between the parties as to the *interest*, would be allowed upon the terms of the defendant State paying into court the amount ascertained for which she was liable as the *principal*.

But the court, controlled by considerations lying far beyond any that had been indicated in the previous opinions delivered in the earlier stages of the case or had been entertained by counsel in the cause, deemed it wisest to afford to the parties themselves an opportunity—which, to be sure, had been open to them, and of which they had been admonished during a period of fifty years—of meeting together in conference and agreeing upon the matter of interest.

The Governor of West Virginia, under powers given him by the constitution of his State, called the legislature to meet in special session in May, 1911. On April 20, 1911, the Governor of Virginia and the Virginia Debt Commission wrote to the Governor of West Virginia and conveyed to him, through a special committee, a letter earnestly requesting that he call upon the legislature, soon to assemble, to consider the suggestion made in the opinion of this court and to make provision for the conference there recommended. The Governor did lay before the legislature the communications he had received, but no action was had by the legislature.

The whole matter was brought to the attention of this court by the complainant the Commonwealth of Virginia on October 10, 1911, and on October 30, 1911, the court announced its opinion and judgment, overruling the motion of Virginia "to proceed with the further hearing and determination of the cause," saying, among other things:

> "If the authorities of West Virginia see fit to await the regular session of the legislature, that fact is not sufficient to prove that when the voice of the State is heard it will proclaim unwillingness to make a rational effort for peace,"

and holding, in effect, that the provision for the conference to be had between the two States could only be made at a *regular* session of the West Virginia legislature.

So, as the case now stands, it must await the regular session of the West Virginia legislature, which meets in January, 1913, and every two years thereafter, when it may provide for the conference.

What provision the legislature may make, what powers it may confer upon its representatives at such conference, what restrictions and conditions it may impose, what that conference may be authorized and empowered to do, and whether any agreement will be reached between the conferees, are all things beyond conjecture.

January, 1915, must come before the action of West Virginia's representative at such conference can be approved or rejected by the legislature, and other regular sessions, of two years' interval, must come and go before provisions can be made for the payment of the liability that has been already ascertained, and hence we feel authorized in suggesting that if the final payment of this liability is to be projected to a vanishing point in space that West Virginia should, at this stage of the cause, be required to pay, at least, so much of the costs of the litigation as are now demanded, and, with great diffidence, we suggest that she be further required to pay the amount of the principal, for which she has been already ascertained to be liable, before the further extension is allowed for the ascertainment of the interest accrued on that principal.

Doubts may exist in some minds as to expediency of pressing to final decree this liability against a "sovereign State," when no means or agencies are apparent by which such decree can be enforced against the State. That consideration was urged on behalf of West Virginia as a ground of demurrer to the bill. It may not be improper to aver here that Virginia has not instituted this litigation and referred her complaints to this court

> "in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies."

She has come, not as matter of grace, but of right, in reliance upon those ordinary equitable remedies which the humblest man may invoke and employ in this court, in the absolute confidence that they will be applied in his behalf as fully and as impartially as would be the remedies on which he would rely for the protection of his life or liberty.

Virginia has no doubt as to the complete enforcement of any decree that this court may make against either of the sovereign States, litigant here, and she needs nor desires resort to any other than the usual and ordinary remedies that have been invoked in the arguments that have been heretofore addressed to the court.

The matter of costs has been often the subject of consideration by this court, and reliance is here had on those rules which this court has recognized and applied. In *Pennsylvania vs. Wheeling Bridge Co.*, 18 Howard, 461, this court said:

> "In the nature of this jurisdiction therefore, or in the character of the suits in this court of original jurisdiction, we perceive nothing that should lead us to distinguish, on the question of costs, between this court and the circuit courts. And, as we have already said, the grounds for the exercise of the power—namely, the repeated recognition by acts of Congress of the right of the prevailing party to costs—is as applicable to the one court as the other."

So, in *Missouri vs. Illinois,* 202 U. S., 598, a motion was made for allowance of costs. The complainant objected to an allowance of costs as being "inconsistent with the dignity of a sovereign State," but this court, through Mr. Justice Holmes, replied:

> "So far as the dignity of the State is concerned, that is its own affair, and * * * as to the sup-

> posed rule in boundary cases, it is not absolute. But, in many cases of that kind both parties are equally interested to have the boundary settled, and, whichever State brings the suit, both equally are actors. * * * There is no indication that the defendants desired or needed the determination of this court, as States well might when their jurisdiction is in doubt. So far as this point is concerned there is no reason why the plaintiff should not suffer the usual consequences of failure to establish its case."

The application of these views to the present case is quite apparent. The matter of the "dignity of the sovereign States" here litigating should not be allowed to handicap the regular and ordinary movement of the case, as cases involving the familiar questions presented here are accustomed to move. Unlike the boundary cases, in which questions of jurisdiction are involved, the parties here are not equally interested in desiring the determination of this court. In fact, the jurisdiction of the court was stoutly resisted by the defendant, State of West Virginia, and, as will be presently shown, that State has persistently, from the close of the war, in 1865, up to the institution of this suit, and even since this suit has been pending, resorted to every available ground for obstruction and delay.

West Virginia should be required to pay this item of the costs, because it was on her account, and on her insistence, that the services were rendered by the master that necessitated the amount allowed as the master's compensation.

Throughout this case, from the demurrer which it filed to the bill of complaint, through the pleas, the answer and down to the framing of the order of reference, West Virginia has persistently maintained that what is known as the "Wheeling Ordinance" afforded ample and adequate grounds for resisting and defeating the case stated in the bill. (See

brief of Mr. Carlisle, for West Virginia, and the answer of West Virginia, and the order of reference, May's Comp.)

It needs but a cursory glance at the report of the special master to see that ninety per cent of the labor and time expended in reaching the results there stated were expended upon those features which arose altogether and only under the Wheeling Ordinance. Had the scope of his inquiry been restricted to the international law doctrine as that had been applied in Hartman *vs.* Greenhow, 102 U. S., 672, and approved in Virginia *vs.* West Virginia, 220 U. S., 31, the time of the master had been limited to but a few hours and his work expressed in but a few pages of report. The needless expenditure of labor and time—which is but scantily compensated by the allowance made as his compensation—would all have been avoided, and, it having been made necessary by the insistance of West Virginia, it seems but reasonable that she should be required now to pay for it.

It is but right to say that the Attorney General of Virginia then in office did unite with West Virginia in reliance on the Wheeling Ordinance as the proper basis of settlement between the two States, but as Virginia had no pecuniary interest in the result of this case, beyond her exoneration from liability, it cannot be held that her contention served for more than a makeweight to that of West Virginia. It is undeniable that the bondholding creditors, through their counsel, opposed throughout the notion that the Wheeling Ordinance had any relevancy or potency in the inquiry that was urged in this suit.

But, in addition to this feature of West Virginia's contentions, it is evident from this record that since the close of the war and up to the institution of this suit she opposed every effort that was made to bring about a friendly settlement of this claim. During a period of forty-five years, from January 20, 1867, down to May 2, 1911, repeated efforts were made by Virginia to induce West Virginia to enter upon a settlement, all of which were without avail. Six con-

spicuous efforts on the part of Virginia to bring about a settlement may be more particularly referred to.

These six efforts were as follows:

Governor F. H. Pierpont, of Virginia, sent a communication to Governor Arthur I. Boreman, of West Virginia, dated January 20, 1867, together with a joint resolution adopted by the General Assembly of Virginia on February 28, 1866, in reference to the reunion of the States of Virginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stewart, Mr. William Martin, and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects.

On February 28, 1867, the legislature of West Virginia adopted a joint resolution declining to entertain any proposition looking to a reunion of the States, and refusing to treat with the Commissioners of Virginia upon the adjustment of the public debt of Virginia until the suit of Virginia against West Virginia to recover jurisdiction over the counties of Berkeley and Jefferson had been finally disposed of (May's Compilation, vol. 1, pp. 444-445).

Governor Gilbert C. Walker, of Virginia, sent another communication to Governor William E. Stephenson, of West Virginia, in February, 1870, endeavoring to adjust the Virginia public debt with the State of West Virginia, and about the same time Messrs. William J. Robertson, W. T. Sutherlin, and P. H. Aylett, commissioners appointed on the part of Virginia, also sent a communication to Governor Stephenson. The first communication was transmitted by Governor Stephenson to the West Virginia legislature on February 24, 1870, and the second communication was so transmitted on February 28, 1870.

It appears from the joint resolution adopted by the legislature of West Virginia after the receipt of Governor Stephenson's communication that the Virginia commis-

sioners were then present in the city of Wheeling for the purpose of adjusting the public debt. The West Virginia legislature appointed a committee to confer with the Virginia commissioners and report to the legislature, but as far as the journals of the House and Senate of West Virginia of the session of 1870 show no report was made by this committee (May's Compilation, vol. 1, pp. 446-447).

The defendant's answer states that afterwards, on March 3, 1870, the Governor of West Virginia was authorized by the legislature to appoint three resident citizens of the State to treat with the authorities of Virginia upon the subject of the proper adjustment of the public debt of that State, but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners and the resolution authorizing their appointment was passed on the last day of the session of the legislature, the Governor of West Virginia stated in his message of 1871 that no appointment had been made owing to the lack of funds to pay the expenses of such commission (May's Compilation, vol. 2, p. 12).

On February 17, 1871, Governor Walker, of Virginia, sent another written communication to Governor Stephenson, of West Virginia, offering to adjust West Virginia's proportion of the public debt of Virginia by arbitration in accordance with a joint resolution of the General Assembly of Virginia approved on February 11, 1871 (May's Compilation, vol. 1, pp. 449-451), but West Virginia declined this offer (May's Compilation, pp. 452-454).

In February, 1895, Governor O'Farrell, of Virginia, communicated to Governor McKorkle, of West Virginia, a copy of the resolution adopted by Virginia March 6, 1894, appointing commissioners for the purpose of negotiating with West Virginia for the payment of the proportion of the Virginia public debt to be borne by West Virginia, but no response was ever made by West Virginia, although her legislature declined to negotiate with Virginia (May's Compilation, pp. 76 and 494).

On February 1, 1905, Mr. Randolph Harrison, on behalf of the Virginia Debt Commission, addressed the joint committees on finance of the West Virginia legislature in relation to West Virginia's contributive share of the debt of Virginia (May's Compilation, pp. 68-82), and as West Virginia was still unwilling to treat with Virginia this suit was begun. The last attempt of Virginia to treat with West Virginia is set forth in the motion papers on the motion of October 9, 1911, herein to proceed with the determination of the suit.

The only effort made by West Virginia at any time to settle this debt was made through a committee consisting of Messrs. John J. Jackson, J. M. Bennett, and A. W. Campbell, appointed by Governor J. J. Jacob, of West Virginia, under resolutions adopted by the West Virginia legislature on February 15 and February 24, 1871. These gentlemen sent a letter to Governor Walker, of Virginia, notifying him of their appointment and inquiring what channel of communication with Virginia was open to them. Governor Walker replied that the joint resolution of Virginia providing for arbitration had superseded the joint resolution of February 18, 1870, authorizing the Governor to appoint commissioners, and for that reason that he could not appoint commissioners to confer with West Virginia.

He said that the tender of arbitration had not been withdrawn and was still open (May's Compilation, pp. 457-459). These commissioners of West Virginia then proceeded to determine for themselves the balance due Virginia from West Virginia, and found the amount to be $953,360.23 (May's Compilation, p. 472); but this determination was not satisfactory to the State of West Virginia, and the Senate finance committee of the West Virginia legislature, on December 22, 1873, made a report to the effect that the State of West Virginia was not liable for any part of the debt of the undivided Commonwealth of Virginia, but that the State of Virginia was indebted to the State of West Virginia in the sum of $525,000.00 (May's Compilation, pp. 490-493). Ever

since that time West Virginia has taken the position that she does not owe any portion of the debt of the undivided Commonwealth of Virginia and that she would not enter into any negotiations looking to the settlement of the Virginia debt question. West Virginia's legislature has repeatedly adopted resolutions denying that West Virginia owed any part of the so-called Virginia debt, and that her legislature was opposed to any negotiation whatsoever on that subject (May's Compilation, pp. 494-496).

The last visit of the representatives of Virginia to West Virginia with reference to the settlement of the debt took place on May 2, 1911, and subsequent to the time of the filing of the defendant's answer, but the other efforts of Virginia to settle this debt and the refusals of West Virginia to do anything with reference to a settlement are virtually admitted in the defendant's answer in paragraph XI thereof.

It appears from the foregoing that Virginia on five separate occasions in the years 1867, 1870, 1871, 1895, and 1905 tried to amicably settle this controversy, and, these repeated efforts having failed, that Virginia brought this suit in February, 1906, and in accordance with the decision herein, dated March 6, 1911, that she again endeavored to meet West Virginia, and it also appears that the only time West Virginia was willing in any way to discuss with Virginia the settlement of the debt was in 1871, when West Virginia appointed commissioners to treat directly with Virginia at a time when the General Assembly of Virginia had adopted a resolution providing for the settlement of the controversy by arbitration. It also appears that the findings of this committee fixing West Virginia's share in even the small sum of about $1,000,000 were repudiated by the West Virginia legislature of 1873, and that from that time down to the present West Virginia has continually refused to treat with Virginia in any way for the settlement of this controversy.

The court has already decided that West Virginia is liable

for the principal sum of upwards of $7,000,000, and this determination imposes upon West Virginia liability for all the costs in the suit.

It is now nearly fifty years since West Virginia's liability for her portion of the debt arose and forty-five years since Virginia first attempted to secure a settlement with West Virginia of that liability.

Virginia is now and at all times since the decision of March 6, 1911, has been ready to settle the decree with West Virginia and bring this litigation to an end. It is West Virginia that is unwilling to determine this controversy, and as West Virginia is the party that is preventing the final determination of the suit the complainant respectfully submits that the defendant and not the complainant should pay the master's fee. Virginia does not dispute that the allowance of $20,000.00 to the master is fair and reasonable, and she does not dispute the master's right to be paid now that his work is completed, but as West Virginia is liable for the costs in this suit the complainant respectfully submits that the court should order the master's fee to be paid by the defendant and not by the complainant.

Until West Virginia's liability for her portion of Virginia's debt was determined it was proper that the complainants should in the first instance advance the costs of this suit; but that time has gone by. Virginia's liability has been determined. Virginia and the bondholding creditors of Virginia who are entitled to receive the money due on their bonds are losers and not gainers because of the delay in the settlement of the decree. Virginia has done everything she can think of to induce West Virginia to act. Under these circumstances to shift West Virginia's liability for the master's fee from West Virginia to Virginia would be inequitable and unjust. The obligation rests upon West Virginia, and she should be compelled to meet it.

HOLMES CONRAD,
Counsel for the Bondholding Creditors.

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Office Supreme Court, U. S.
FILED.
APR 8 1912
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States

OCTOBER TERM, 1911.

No. 2, Original

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

In the Supreme Court of the United States

OCTOBER TERM, 1911.

No. 3, Original

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

The Commonwealth of Virginia, the only complainant in this suit, in which she has, as shown by the record, a large interest in her own right, and in which she also represents, as shown by the record, the claims of the creditors who have intrusted their interests to her keeping, and whose bonds she actually holds, by Samuel W. Williams, her Attorney General, in response to the order made herein on March 18, 1912, directing the parties to show cause before the court on Monday, April 8, 1912, why the prayer of the petition of the Special Master, that the amount of his compensation, as fixed by the court, be advanced and paid by the Commonwealth of Virginia, the complainant herein, should not be granted, answers and says: That no specific demand has heretofore been made upon the complainant for the payment of the compensation of the Special Master, as fixed by the court; that the complainant knows of no ground why the compensation allowed the Special Master, the justice and reasonable-

ness of which is not questioned, should not be paid, and that if, in the opinion of the court, with all the facts before it, it is proper that the complainant should now advance and pay said compensation allowed to the Master, she will arrange to comply with the order of the court at the earliest practicable moment.

Respectfully,

COMMONWEALTH OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON, and
JOHN B. MOON,
Counsel for Virginia.